REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 1091 of 2004**

% **Date of Decision** : 7th May, 2007.

R.P. BIDANI .... Appellant.
Through Mr. V.P. Chaudhary, Sr. Adv. with
Mr. R.C. Gupta & Ms. Sushma, Advocates.

VERSUS

HINDUSTAN LEVER LTD. & ANR. .... Respondents.
Through Mr. Sudhir Chandra, Sr. Adv. with
Mr. Sandeep Prabhakar, Advocate.

CORAM:

HON'BLE DR.JUSTICE MUKUNDAKAM SHARMA,CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. Mr. R.P. Bidani, the appellant herein has challenged judgment dated 27th September, 2004 passed in W.P.(C) No. 1957/1989 titled Hindustan Lever Limited versus Industrial Tribunal-I and Another. By the impugned judgment learned Single Judge of this Court has set aside order/award dated 4th February, 1989 passed by the Presiding Officer, Industrial Tribunal-I, inter alia, holding that the said tribunal did not have the territorial jurisdiction to adjudicate the application filed by the respondent herein, M/s Hindustan Lever Limited-the management, under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short).

2. The facts which are relevant for adjudication of the present appeal may now be noticed. In 1953 the appellant was appointed as an accounts clerk in Hindustan Vanaspati Manufacturing Company Limited, Ghaziabad. He was working at Ghaziabad. The said company was later on amalgamated with the respondent company. The appellant became an employee of the respondent and continued to work at Ghaziabad.

3. On 26th September, 1975 the appellant was transferred to Delhi. The appellant protested but ultimately joined Delhi office on 8th January, 1976. It is the case of the appellant that he joined the said office without prejudice to the pendency of the reference proceedings challenging and questioning the order of transfer dated 26th September, 1975. The transfer was made subject matter of an industrial dispute No. 47/1976 (later on re-numbered 42/1978 before Labour Court, Meerut, subsequently transferred to Labour Court, Ghaziabad).

4. In addition to this dispute, the appellant workman was also involved in Miscellaneous Case No. 37/1975 being an application under Section 33C (2) of the Act for recovery of dearness allowance payable, with progressive linkage with cost of living Index. The said case was also filed in the Labour Court, Meerut.

5. In 1983, a similar dispute was raised by employees of the respondent working at Delhi with regard to freeze of dearness allowance and also for withdrawal of canteen facilities. The said

labour dispute was registered as ID No. 568/1983 and was pending before the Industrial Tribunal, Delhi.

6. While the appellant was posted in Delhi, disciplinary proceedings were initiated on the ground that he was a habitual unauthorised absentee from duty and domestic enquiry was held and his services were terminated by an order of dismissal dated 10th August, 1984.

7. The respondent management thereafter filed an application under Section 33(2)(b) of the Act seeking approval of the order of dismissal. This application was filed before the Industrial Tribunal Delhi before whom ID No. 568/1983 reference relating to dearness allowance and canteen facilities for employees of the respondent company in Delhi was pending.

8. The question raised in the present appeal is whether the Industrial Tribunal at Delhi had/has the territorial jurisdiction to adjudicate and decide this application under Section 33(2)(b) of the Act or only the Industrial Adjudicator at Ghaziabad had/has the

territorial jurisdiction to decide an application under Section 33(2)(b) of the Act.

9. The Industrial Tribunal at Delhi by its order dated 4th February, 1989 has held that the concerned authorities at Ghaziabad have jurisdiction to adjudicate the application under Section 33(2)(b) of the Act. While doing so, the Presiding Officer of the Industrial Tribunal has in substance relied upon award dated 30th April, 1985 passed by the Labour Court, Ghaziabad holding, inter alia, that the transfer order dated 26th September, 1975 by which the services of the appellant were transferred from Ghaziabad to Delhi was mala fide and illegal.

10. Learned Single Judge, however, did not find merit in the said reasoning and in our opinion, rightly. Learned Single Judge has pointed out that the question of jurisdiction is not dependent upon imponderables. The order of termination dismissing the appellant was passed on 10th August, 1984. At that time the appellant was working in Delhi pursuant to the transfer order dated 26th September, 1975. This transfer order was quashed by an award dated 30th April,

1985 i.e. after the date of order of termination which was passed on 10th August, 1984. On the date of termination and filing of the application under Section 33(2)(b) of the Act, the order of transfer had not been set aside and was in operation. The appellant was working in Delhi but the question of his transfer was under clout and challenge before the Industrial Adjudicator at Ghaziabad. The respondent management could not have presumed and had no ability to know the fate of the said industrial dispute when the order terminating the services of the appellant was passed in Delhi. Law does not require parties to have ability of a soothsayer or a third eye to know what is in store for them in future. Jurisdiction of the Court is determined and decided on the date when the proceeding is initiated. If on the date when the proceeding was filed, court/forum concerned in Delhi had jurisdiction, subsequent events cannot have the effect of nullification and annihilation of the right of the court/forum in Delhi to decide the case, unless there is statutory amendment or wrong assumption of jurisdiction at the first instance. It may be relevant to state that the

award dated 30th April, 1985 is subject matter of a writ petition before Allahabad High Court. If the said award is set aside, would it mean that the territorial jurisdiction would again shift from Ghaziabad to Delhi or if the said decision is again reversed by the Supreme Court then territorial jurisdiction of the Courts/forums will undergo a change. This uncertainty cannot be approbated. Thus the contention of the appellant and the reasoning given by the learned Industrial Tribunal that the proceedings at Delhi were not maintainable as award dated 30th April, 1985 has set aside the transfer order from Ghaziabad to Delhi, is liable to be rejected. Thus to determine territorial jurisdiction normally the facts as they exist on the date of the institution of the petition should be taken into consideration and subsequent and posterior facts, unless the enactment is to the contrary, have to be ignored.

11. This brings us to the principal issue and question of territorial jurisdiction of labour court and industrial authorities to entertain an application under Section 33(2)(b) of the Act. The answer to the

question lies in the language used by the legislature in the said Section and the object and purpose behind the said section. The said Section reads as under:-

> "**33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-** (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,
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> > (*a*) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
> > (*b*) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
> >
> > (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no

such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],

(*a*) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(*b*) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute

(*a*) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(*b*) by discharging or punishing whether

by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation .For the purposes of this sub-section, a “protected workman”, in relation to an establishment, means a workman who, being [a member of the executive or other officer-bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a] Labour Court, Tribunal or National Tribunal under the

> proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:
>
> Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:
>
> Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed."

12. Section 33 of the Act requires parties to maintain status quo with regard to terms and conditions of employment during pendency of proceedings. Sub-Section 2, however, provides that during pendency of an industrial dispute, an employer can in accordance with the standing orders or in accordance with the terms of contract, as the case may be, may discharge services of an employee by way of dismissal, or otherwise by way of punishment for a misconduct not

connected with a pending industrial dispute. The proviso, however, requires that no workman shall be discharged or dismissed unless he has been paid wages for one month and employer makes an application to the authority before which the proceeding is already pending. The Supreme Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Limited versus Shri Ram Gopal Sharma and others*** reported in AIR 2002 SC 643 has relied upon two earlier decisions in the case of ***Strawboard Manufacturing Company versus Govind*** reported in AIR 1962 SC 1500 and ***Tata Iron and Steel Company versus Modak*** reported in AIR 1966 SC 380 and has opined that Section 33(2)(b) is mandatory. Until permission is granted by the concerned authority before whom proceedings are pending, an order of dismissal or discharge remains incomplete and inchoate. Once approval is granted, the order of dismissal or discharge relates back to the date when it was initially passed but the workman has a right to file a complaint under Section 33A of the Act challenging the order granting approval on the grounds available to

him. If approval is not granted under Section 33(2)(b), the order of discharge or dismissal is inoperative/void and the employee is entitled to reinstatement without recourse to Section 33A of the Act, which in such situation is rendered meaningless and futile. The Supreme Court in this decision, over ruled it's earlier decision in the case of ***Punjab Beverages Private Limited versus Suresh Chand***, reported in AIR 1978 SC 995.

13. A reading of the above decision and also the bare Section shows that the management is required to file an application under Section 33(2)(b) of the Act when an order of discharge or dismissal is passed for misconduct not connected with the pending dispute but in respect of a “workman concerned”. Such application is required to be filed before the authority which is dealing with the pending dispute, though the dispute is not connected with the misconduct resulting in order of dismissal or discharge. However, the pending dispute should be in respect of the “concerned workman”. Therefore, the authority or the court has to examine whether the workman is a “workman

concerned with such dispute" pending before the said labour authority or court. If the answer is "yes", then an application under Section 33(2)(b) of the Act will be maintainable before the said authority/court.

14. The expression "a workman concerned with such dispute" has been subject matter of judicial decisions by the Supreme Court and High Courts. The said expression not only includes a workman directly and actually concerned with a dispute but also includes all such workmen on whose behalf the dispute is raised as well as those who would be bound by the award which may be passed in the said dispute. It is well settled that apart from deeming exceptions industrial disputes cannot be raised for enforcing claims of individual workmen. What imparts to a dispute of a workman, character of an industrial dispute is that it affects the rights of the workmen as a class. An individual dispute can become an industrial dispute if espoused by his fellow workmen on the ground that they have commity of interest and direct and substantial interest in the employment, non employment or conditions of work of the concerned

workman (Refer ***Indian Cable Company Limited versus workmen,*** reported in (1962) 1 LLJ 409 and ***Western India Match Co. Ltd. Vs. Workers Union*** reported in (1970) 1 SCC 225). However, for the purpose of finding out whether a particular workman is covered by the expression " a workman concerned with such dispute", the definition of the term industrial dispute as defined in Section 2(K) and the decision of the Supreme Court in the case of ***Indian Cable Company Limited*** (supra) is of little application and relevance. Section 33(2)(b) of the Act and the expression "a workman concerned with such dispute" shows that the legislature has recognised and accepted that behind the collective nature of industrial dispute, there are individual workmen who are concerned and whose rights are decided in a dispute which is already pending consideration and these workmen are given protection lest their services are terminated vindictively, mala fidely or due to unfair labour practice. The said expression not only includes the workmen whose name is actually mentioned in the reference but all those who may be affected by the said adjudication.

The term “concerned workmen” should not be given a narrow construction and includes all workmen on whoes behalf the dispute has been raised as well as those workmen who will be bound by the award. (Refer ***New India Motors Private Limited versus K.T. Morris*** reported in AIR 1960 SC 875 and ***Upper Ganges Valley Electricity Supply Company Limited versus G.S. Srivastva,*** reported in (1963) 1 LLJ 237 SC).

15. The Bombay High Court in ***New Jehangir Vakil Mills Limited versus N. L. Vyas,*** reported in 1958 (2) LLJ 573 had the occasion to examine the said expression and has drawn a distinction between a “concerned workman” and an “interested workman”. A workman may have interest in a dispute for various reasons, including the fact that he supports a fellow workman but this is not sufficient to make the workman a “concerned workman”. The word “concerned” connotes a kind of specific, direct interest in any legal proceedings, to which he may not be individually a party, when a result or adjudication is capable of directly affecting him favourably or prejudicially according

to the result. A workman who is likely to benefit or adversely affected by any decision will be a “workman concerned” with such dispute and the management in such cases must move an application under Section 33(2)(b) of the Act.

16. It may be relevant to state here that in the present case when the question of territorial jurisdiction was being examined, the respondent management had filed an application calling upon the appellant workman to specifically state whether the appellant was a workman concerned in ID No. 568/1983 pending before the Industrial Tribunal at Delhi. It was mentioned in the application that during oral arguments, the appellant had stated that he was not a workman “concerned” with the dispute in ID No. 568/1983. Accordingly, the Industrial Tribunal was requested to record statement of the appellant whether he was a “concerned workman” in the dispute at Delhi and once the statement was recorded, the respondent management agreed to reserve their rights to move and raise contentions before an appropriate authority. The respondent filed a reply to the said

application stating that the averments made in the application were not relevant and material and oral arguments advanced by the appellant workman have been totally misunderstood and twisted. Reliance was placed upon the award of the Labour Court, Ghaziabad dated 25th June, 1985 setting aside the appellant's transfer from Ghaziabad to Delhi. The appellant workman stated that question of making any statement did not arise. (Copy of the said application and the said reply are available in the writ record at pages 177 to 182). It is apparent that the appellant workman was deliberately and intentionally avoiding direct and categorical answer to the relevant question whether the appellant was a “concerned workman” in the dispute at Delhi. Adverse inference therefore can be drawn against the appellant for his refusal and failure to answer the said question and make statement.

17. In view of the above factual position, it cannot be denied that the appellant was a workman concerned with the dispute pending

adjudication before the Industrial Tribunal at Delhi. The reference subject matter of the dispute in ID No. 568/1983 was as under:-

> "Whether the freeze endorsed upon the dearness allowances of the office employees of Delhi Branch of M/s Hindustan Lever Ltd, New Delhi at a fixed point of Delhi working class cost of living index in place of a progressive linkage with the rise in index is legal and/or justified if not, to what relief are the employees entitled?
> Whether the withdrawal of canteen facilities in the branch office of Hindustan Lever Ltd is legal/or justified. If not to what reliefs are the employees entitled? "

18. In 1984, the appellant was working in Delhi. He was concerned with the freeze of dearness allowance and also withdrawal of canteen facilities as an employee working with the respondent at Delhi. Adjudication and result of the said ID No. 568/1983 would have beneficially or prejudicially affected the appellant. Therefore, he was a concerned workman in relation to the industrial dispute before Industrial Tribunal at Delhi within the meaning of Section 33(2)(b) of

the Act when his services were terminated and when the application was filed by the respondent-management.

19. At the same time, it cannot be disputed that the appellant was also a concerned workman with regard to the separate disputes which were pending at Ghaziabad at the time when the order of dismissal dated 10th August, 1984 was passed. The appellant was accordingly a workman concerned in the said the disputes which were pending at Ghaziabad. The said authorities at Ghaziabad were also having concurrent jurisdiction to entertain and decide an application under Section 33(2)(b) of the Act. However, mere concurrent jurisdiction with different authorities would not divest and or exclude territorial jurisdiction of the competent authority at Delhi from adjudicating and deciding an application under Section 33(2)(b) of the Act. Law recognises that forums at different locations may have concurrent jurisdiction to adjudicate and decide disputes inter se parties and in such cases a party has a right to invoke jurisdiction of a forum located at a place of his choice. The party invoking jurisdiction

of a forum/authority located at a particular place cannot be non-suited on the ground that the forum/authority at another location also has jurisdiction. An application under Section 33(2)(b) cannot be dismissed on the ground that a similar application would be maintainable before a different forum also. Concurrent jurisdiction is not a valid ground to non-suit a party invoking jurisdiction of a forum at a particular place vested with jurisdiction by law. When courts/forums at two or more places have jurisdiction, choice of forum is with the person filing the proceedings.

20. Sections 33(2)(b) of the Act does not require filing of multiple applications for approval in all forums where proceedings are pending. One application before a competent forum/authority is required to be filed. Scope of enquiry for granting or rejecting approval under section 33 (2) (b) of the Act is limited. It has to be seen whether prima facie case is made out as regards the validity or otherwise of the domestic enquiry against the workman. Even when approval is granted under section 33(2) (b) of the Act, the workman

can challenge the action in an appropriate proceedings under the Act. Order of approval is not final against the workman (Refer ***Cholan Roadways Ltd. Vs. G. Thirugnanasambandam***, reported in (2005) 3 SCC 241).

21. Learned counsel for the appellant submitted that in the dispute relating to transfer from Ghaziabad to Delhi pending before Labour Court at Ghaziabad was the principal dispute in which the appellant was directly and substantially involved. On this basis, jurisdiction of a forum under Section 33(2)(b) cannot be decided. Under the said Section, jurisdiction of a forum is decided on the basis whether a workman is a “concerned workman” in a dispute pending before the authority before whom an application under Section 33(2)(b) of the Act has been filed. The legislature in it's wisdom has not made any distinction between two disputes-one in which the workman is the principal or the only party and another dispute in which the workman along with some other workmen are involved. In both situations, the forums will have jurisdiction and an application under section 33(2)

(b) of the Act can be filed in any forum. The argument of the appellant, if accepted, is likely to cause lot of confusion and uncertainty, besides technical objections and litigation, with the management being required to first examine the question in which dispute the worker is more prominently involved and can be classified and regarded as a main or principal dispute. This is not the requirement in law and Section 33(2)(b) of the Act and, therefore, cannot be accepted. However, in a given case, power under Section 33B of the Act can be exercised to transfer proceedings under Section 33 of the Act from one forum to another. This takes care of any inequities and difficulties which may be faced or may come up when forums have concurrent jurisdiction. The said provision is similar to Section 22 of the Code of Civil Procedure, 1908.

22. Learned counsel for the appellant has referred to the judgments relied upon by the learned Single Judge in the impugned judgment. In the written submissions filed, it has been stated that the said judgments have no application as they deal with Section 10 and not

Section 33 of the Act. This is also correct but does not decide and resolve the issue in favour of the appellant. Section 33 and compliance thereof depends upon pendency of proceedings before an authority. Pendency of proceedings before the authority/forum confers jurisdiction on that authority/forum to decide the subject matter i.e. application under section 33(2) (b) of the Act. The said decisions support the view we have taken. We will now refer to some of the said decisions. Bombay High Court in ***Lalbhai Tricumlal Mills Limited versus Dhanubhai Motilal Vin and others***, reported in AIR 1955 Bombay 463 noticed the provisions of Bombay Industrial Relations Act and observed that the same did not deal with the causes of action and also does not indicate the factors that will confer jurisdiction upon labour courts on the basis of location. It was accordingly held that the well known tests to decide questions of territorial jurisdiction as known in common law and jurisprudence should be applied to decide the question of territorial jurisdiction. If subject matter of a dispute substantially arises within the jurisdiction

of a labour court, then the said labour court will have jurisdiction. The test is not whether any other forum located in a different place will also have jurisdiction. The test is whether the forum approached has territorial jurisdiction. A forum has territorial jurisdiction once subject matter of a dispute substantially arises within its jurisdiction. In this regard we have to find out what are the ingredients of the dispute. If there are various ingredients of the dispute then the forum has to examine whether an ingredient is sufficiently important to constitute subject matter of a dispute as arising within the jurisdiction of this Court. Under Section 33 of the Act, territorial jurisdiction is determined by the place and forum before whom a dispute is pending in which the workman is "concerned".

23. This decision was followed and referred to with approval by the Supreme Court in ***Workmen of Sri Ranga Vilas Motors Private Limited versus Sri Ranga Vilas Motors Private Limited and others,*** reported in 1967 (2) LLJ 12. It was held by the Supreme Court that well known tests relating to jurisdiction of a court or tribunal

would equally apply while deciding whether a forum under the Act has jurisdiction. Ordinarily a workman working in an establishment could raise a dispute at the place of establishment. What is necessary is that there should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry, concerning which the dispute arose.

24. A full Bench of Patna High Court in ***Paritosh Kumar versus State of Bihar,*** reported in 1984 LLC 1254 examined the question of territorial jurisdiction with reference to Section 10 of the Act. It was held that a forum located at the place where the order of termination of services was made would patently have jurisdiction. The second principle is, the nexus between the territory of the state and situs of employment of the workman. Situs of employment of the workman is significant factor to decide territorial jurisdiction. The third principle is to apply well known tests of jurisdiction as applicable to civil courts. Reference in this regard was made to Section 20(c) of the Code of Civil Procedure, 1908 and it was held that it would be axiomatic that

the territory within which the services of an employee are wrongfully terminated would be the territory where the cause of action would substantially arise. The Full Bench specifically rejected the contention raised that Section 20 of the said Code and in particular Clause (c) thereof conferring jurisdiction on courts where cause of action wholly or in part arises would not be applicable to cases under the Act. It was held that without being hyper-technical or going to the abstruse length of saying that cause of action in a civil case and an industrial dispute are synonymous, it must be held that there was no sharp or exclusionary line of division between the two cases i.e. civil disputes and industrial disputes for the purpose of determining territorial jurisdiction. Well known principles of territorial jurisdiction governing civil disputes on the basis of concept of cause of action would equally apply to the Act. More importantly for us in the said decision, the Full Bench noticed that there may be cases of concurrent jurisdiction. The contention that there cannot be concurrent jurisdiction was not accepted. It was held that concept of

concurrent jurisdiction is recognised and sanctified under the Code. Reference was made to ***Lalbhai case***, ***Indian Cables*** case and ***Ranga Vilas Motors*** case(supra). Reference was also made to ***Hindustan Aeronautics Ltd. versus Workmen,*** reported in AIR 1975 SC 1737 and ***Lipton Limited versus Employees,*** reported in AIR 1959 SC 676. With regard to concurrent jurisdiction reference was also made to ***Emerald Valley Estates versus Secretary for Kerala Estates and Staffs' Union,*** reported in 1979 Labour Industrial Cases 86 wherein it has been held as under:-

> "It might also be noticed that to confer jurisdiction for reference on the State Government concerned, it is not absolutely necessary that the cause of action wholly of exclusively should arise in that State. There may be cases where part of the cause of action arose in two or more States. In such cases, two or more States may have concurrent jurisdiction. When the question regarding the territorial jurisdiction crops up, what is to be asked and answered is whether the cause of action substantially arose in the State, the Government of which referred the dispute for adjudication."

25. In ***Kusum Ingots & Alloys Ltd. v. Union of India***, reported in (2004) 6 SCC 254 the Supreme Court examined Clause 2 of Article 226 of the Constitution of India. It was held that a writ petition would be maintainable before the High Court even where a part of cause of action arises. The Supreme Court quoted with approval ***Nasiruddin versus STAT*** reported in (1975) 2 SCC 671, wherein it has been observed as under:

> "The expression "cause of action" is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens . The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular court. The choice is by reason of the jurisdiction of the court being attracted by part of cause of action arising within the jurisdiction of the court."

26. In view of the findings given above, we find no merit in the present appeal and the same is dismissed. However, we clarify that we have neither examined any of the disputes on merits, nor the contention of the appellant that the application under Section 33(2)(b) of the Act was not maintainable and the case of the appellant is covered under Section 33(1) of the Act. These are matters for the learned tribunal to adjudicate and decide. In the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MAY 07, 2007.
VKR/P